
AN OVERVIEW OF PATENT MEANING PROCESS TRANSFER OF PATENT RIGHTS

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What Is a Patent?

A patent is the granting of a property right by a sovereign authority to an inventor. This grant provides the inventor exclusive rights to the patented process, design, or invention for a designated period in exchange for a comprehensive disclosure of the invention. They are a form of [incorporeal right](#).

Government agencies typically handle and approve applications for patents. In the United States, the U.S. Patent and Trademark Office (USPTO), which is part of the Department of Commerce, handles applications and grants approvals. Most patents are valid for 20 years in the U.S. from the date the application was filed with the USPTO

How to Apply for a Patent :

Before making a formal application, an applicant should research the [Patent and Trademark](#) Office's database to see if another person or institution has claimed a patent for a similar invention. The invention must be different from or an improvement upon a previous design to be considered for a patent. Applicants need to take care to maintain accurate records of the design process and the steps taken to create the invention. Enforcing the patent is up to the person or entity that applied for the patent.

To apply for a patent in the United States, the applicant submits specific documents and pays associated fees. Written documentation includes drawings, descriptions, and claims of the item to be patented. A formal oath or declaration confirming the authenticity of the invention or improvement of an existing invention must be signed and submitted by the inventor. After fee payment, the application is reviewed and either approved or denied.

Types of Patents :

There are three types of patents available in the United States: utility patents, design patents, and plant patents. Each has its own specifications and durations. A [patent can also be pending](#), indicating that the inventor has begun applying for a patent.

The Patents Act, 1970 (“Patents Act” :

A ‘Patent’ is an intellectual property right which protects any new invention. It is an exclusive right that protects the rights of the inventor and prevents other people to unauthorized use and misappropriate the registered patent. A patent is granted for a term of 20 (twenty) years from the date of filling of the application. It is important to note that patent for a new invention



is registered only if the invention is 'novel' and 'original' i.e. it has not been introduced in the public domain in India or anywhere in the world; is 'capable of industrial application' which refers to the ability of the invention to be used in an industry; and is an invention that requires to employ a process of 'inventive steps', which is defined as 'a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art', under the Patents Act.

The Patents Act bestows each inventor, whose patent has been registered, with certain rights, namely:

- with respect to a patent for a product, the right to prevent third parties from using, selling, making, importing, etc. the product without prior consent; and
- with respect to a process for which a patent is obtained, the right to prevent third parties from using, selling, offering, etc. a product obtained from that process, without the prior consent of the original inventor.

Further, India is a signatory to the Patent Cooperation Treaty (PCT) which permits an applicant to file an application for registration of an international patent. Upon filing such application, an inventor can obtain patent protection in multiple countries (members of PCT), simultaneously.

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

AI Overview :

The 10 rights of the patient, often used in the context of medication administration, are: right patient, right medication, right dose, right time, right route, right reason, right documentation, right to refuse, right assessment, and right evaluation.

The Bottom Line :

Patents are legal rights granted to inventors for their creations. Government divisions, such as the United States Patent and Trademark Office, issue patents and other intellectual property rights to inventors, authors, and other creators. Patent rights give exclusive rights to use, replicate, or sell the protected invention without interference from others who wish to do the same. In exchange, the issuing authority is granted the right to publish the details of the invention.

Patents are granted for a limited time, such as 20 years from the date of filing for plant and utility patents and 14 or 15 years for design patents. Patents issued in the United States only offer protection within the U.S. To extend protection in other nations, the applicant must apply with the governing authority of that nation.²³

The transfer of patent rights is an important aspect of [intellectual property law](#),



facilitating the commercialisation and dissemination of technological innovations. In India, the transfer of patent rights is governed by the Indian Patents Act, 1970.

Meaning of Transfer of Patent Rights :

Transfer of patent rights is the process by which the ownership or interest in a patent is legally reassigned from one party to another. This transfer can occur through various mechanisms such as assignments, licences or by operation of law. In an assignment, the original patent holder (assignor) transfers their ownership rights to another party (assignee), who then gains the ability to enforce the patent.

Licensing involves granting permission to another party to use the patent under agreed terms without transferring ownership. Transfers can also happen through legal processes such as inheritance or company mergers. The transfer must comply with legal requirements to be valid, often involving written agreements and official registration.

Forms and Nature of Transfer of Patent Rights :

The grant of a patent confers upon the patentee the exclusive right to prevent others from making, using, exercising or selling the patented invention without permission. There are several ways a patentee can deal with a patent:

1. Assignment
2. Licences
3. Transmission by Operation of Law

1. Assignment :

Assignment involves transferring the proprietary rights of the patent from the patentee (assignor) to another party (assignee). The Indian Patents Act does not define “assignment,” but it is generally understood to include the following:

- **Legal Assignment:** This involves transferring an existing patent or agreeing to transfer a patent. The assignee can enter their name as the patent owner. A patent created by deed can only be assigned by a deed and the legal assignee acquires all rights associated with the patent. The process involves:
 - **Drafting a Deed:** The deed should detail the rights being transferred and any conditions attached.
 - **Execution:** Both parties must sign the deed in the presence of witnesses.
 - **Registration:** The executed deed must be registered with the patent office.
- **Equitable Assignment:** An equitable assignment occurs when the patentee agrees to transfer a defined share of the patent to another person. The assignee in this case cannot register as the proprietor of the patent but can have notice of their interest entered in the register.
- **Mortgage:** A mortgage involves transferring patent rights wholly or partially to an



assignee in return for a sum of money. Upon repayment, the patent rights are restored to the assignor. The mortgagee's name can be entered in the register as the mortgagee but not as the proprietor. The key steps include:

- **Agreement:** Drafting a mortgage agreement detailing the terms, including repayment schedules and conditions for reverting rights.
- **Execution and Registration:** Similar to assignments, the agreement must be executed and registered.
- **Repayment and Reversion:** Upon repayment, the rights revert to the patentee and the mortgagee's interest is removed from the register.

2. Licences :

The Patents Act allows patentees to grant licences to others to make, use or sell the patented invention. Licences can be:

- **Voluntary Licence:** These are granted by the patentee without government intervention. The terms are mutually agreed upon by the licensor and licensee. The process involves:
- **Negotiation and Agreement:** The licensor and licensee negotiate terms, including scope, duration and royalties.
- **Written Agreement:** The terms are documented in a written contract, signed by both parties.
- **Execution:** The licence becomes effective upon execution and the licensee can use the patent as agreed.
- **Statutory Licence:** These are granted by the government, often in the public interest, such as compulsory licences under specific conditions.
- **Exclusive/Limited Licence:** An exclusive licence grants the licensee the sole right to use the patent, excluding even the patentee. A limited licence restricts the rights to specific conditions like time, place or purpose.
- **Express/Implied Licence:** An express licence is explicitly stated in writing, while an implied licence is inferred from circumstances, such as purchasing a patented product implying permission to use it.

3. Transmission by Operation of Law :

When a patentee dies, their interest in the patent passes to their legal representative. Similarly, in cases of company dissolution or bankruptcy, the patent rights are transferred by operation. Transmission by operation of law occurs in cases such as:

1. **Death of Patentee:** The patent rights pass to the legal representative of the deceased.



2. **Company Dissolution:** The patent rights are transferred as part of the liquidation process.
3. **Bankruptcy:** The patent rights may be sold or transferred to settle debts.

Conclusion :

The transfer of patent rights is a multifaceted process involving various legal and practical considerations. Assignments, licences and transmissions by operation of law each have distinct requirements and implications. Adherence to Section 68 of the Indian Patents Act, 1970, is important for the validity of any transfer. By understanding and navigating these legal intricacies, patentees and assignees can effectively manage and commercialise patent rights, fostering innovation and benefiting from their intellectual property.

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